

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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LINWOOD EDWARD TRACY, JR.; et al.,

Plaintiffs,

v.

CEO, SUCCESSOR FOR DEUTSCHE
NATIONAL TRUST COMPANY; et al.,

Defendants.

3:11-cv-0436-LRH-VPC

ORDER

Before the court are plaintiff Linwood Edward Tracy, Jr.'s ("Tracy") renewed motions for
recusal of the Honorable Larry R. Hicks ("Judge Hicks") under 28 U.S.C. § 455(a).
Doc. ##195, 200.¹

I. Facts and Background

At its core, this is a wrongful foreclosure and wrongful taxation action. Plaintiff William
Gerald Fillion ("Fillion") owned real property in California which was subject to state, county, and
city tax assessments. The tax assessments went unpaid and eventually the property was foreclosed
upon.

On June 21, 2011, plaintiffs filed a civil rights complaint against defendants for violation of
their First and Fourth Amendment rights. *See* Doc. #1. In particular, plaintiffs challenge the tax
assessments and foreclosure claiming that the property belonged to a non-profit organization.

¹ Refers to the court's docket number.

1 Thereafter, Tracy filed the present motion for recusal. Doc. #119.

2 **II. Discussion**

3 Recusal of a district court judge is governed by 28 U.S.C. § 455. The standard for recusal
4 under § 455 is “whether a reasonable person with knowledge of all the facts would conclude that
5 the judge’s impartiality might reasonably be questioned.” *United States v. Studley*, 783 F.2d 934,
6 939 (9th Cir. 1986). Further, the alleged prejudice must result from an extrajudicial source; a
7 judge’s prior adverse ruling is not sufficient cause for recusal. *Id.*

8 The court has reviewed Tracy’s motion for recusal and finds that it is without merit. First,
9 Tracy has failed to comply with the requirements of a motion for recusal pursuant to 28 U.S.C.
10 § 144. Under section 144, a party seeking recusal must set forth, in an affidavit, facts and reasons
11 for the belief that bias or prejudice of the district judge exists. *See* 28 U.S.C. § 144. Here, Tracy did
12 not file any affidavit in support of his motion for recusal.

13 Second, Tracy’s sole reason for recusal of Judge Hicks is that Judge Hicks issued several
14 orders in this action which were adverse to Tracy. The court finds this accusation without merit. It
15 is axiomatic that a judge overseeing an action will issue orders during the course of litigation that
16 may be adverse to one of the parties. This alone, is not a basis for recusal of a judge.

17 Therefore, based on the record before the court and the pleadings and documents on file in
18 this matter, the court finds that Tracy has failed to establish any extrajudicial bias or prejudice that
19 would lead a reasonable person to conclude that the impartiality of this court might reasonably be
20 questioned. *See* 28 U.S.C. § 455(a). In the absence of a legitimate reason to recuse, a judge should
21 participate in all cases assigned. *United States v. Holland*, 510 F.3d 909, 912 (9th Cir. 2008).
22 Accordingly, the court shall deny Tracy’s renewed motions for recusal.

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1 IT IS THEREFORE ORDERED that plaintiff's renewed motions for recusal (Doc. ##195,
2 200) are DENIED.

3 IT IS SO ORDERED.

4 DATED this 28th day of January, 2013.



6 LARRY R. HICKS
7 UNITED STATES DISTRICT JUDGE
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